IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No.320 of 1996
Date of Decision: 15.12.2006

Shanti and others.

..... Appellants

Versus

Barkha Ram (since deceased) through L.Rs.

..... Respondents

CORAM: Hon'ble Mr.Justice Mahesh Grover

....

Present: Shri Arun Jain, Advocate with Shri Amit Jain, Advocate for the appellants.
None for the respondent.

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Mahesh Grover,J.

The defendants are in appeal against the judgment and decree dated 13.10.1995 of the Additional District Judge, Ambala (hereinafter described as `the lower Appellate Court') vide which the findings recorded by the Sub Judge IInd Class, Ambala City (hereinafter referred to as `the trial Court') in her judgment dated 20.8.1991 were reversed.

The plaintiff-Barkha Ram filed a suit for declaration to contend that he was owner in possession of the plot in question for the last fifty years and was using it for the purposes of `Awa' where earthen vessels are prepared. It was alleged that the appellants were trying to interfere with his

possession which led to the proceedings under the provisions of Sections 107/151 of the Code of Criminal Procedure,1973 before the Sub Divisional Magistrate, Naraingarh (for short, `the S.D.M.'). A Salis was appointed by the S.D.M., who submitted report establishing the ownership of the plaintiff-respondent over the plot in question. It was further alleged that earlier also the appellants made an attempt to interfere with the possession of the plaintiff-respondent and had tried to demolish the wall for which they were fined Rs.10/- by the Gram Panchayat.

The suit was contested by the appellants, who denied the averments made by the respondent in his plaint and a counter plea of ownership was set up by them. It was pleaded that the disputed plot belonged to one Smt.Krishni daughter of Assa Ram, who had given it to the appellants and they had been using the same for the last twenty five years. A writing to this effect was given by Smt.Krishni on 10.8.1970. It was further pleaded that the proceedings before the S.D.M. had resulted in dismissal on account of abatement and the appeal against that had also been dismissed. Therefore, the suit was barred by the principle of res judicata.

On the pleadings of the parties, the following issues were framed:-

1. Whether plaintiff is in possession of plot marked ABCDEG?OPP
2. Whether plaintiff has locus standi to file the suit?OPD
3. Whether the suit is maintainable in the present form?OPP
4. (Addl.Issue) Whether the suit is barred by the principles of res judicata.
5. Relief.

The trial Court came to the conclusion that the plaintiff-respondent had failed to establish his ownership and possession over the plot in dispute and, hence, his suit was dismissed vide judgment and decree dated 20.8.1991.

In appeal preferred by the respondent against the aforementioned judgment and decree, the lower Appellate Court reversed the findings of the trial Court and held him to be owner in possession of the disputed plot vide the impugned judgment and decree.

It was contended by the learned counsel for the appellants that the respondent had failed to establish ownership over the disputed plot. Since it was his suit and in the absence of any evidence to substantiate the case set up by him in the pleadings, the trial Court had rightly dismissed the same. That apart, the respondent had admitted the factum of possession of the appellants over the disputed plot while making statement Exhibit D4 before the Court of S.D.M. where the dispute regarding the same property was pending.

No one has put in appearance on behalf of the respondent.

I have heard the learned counsel for the appellant and have perused the record which reveals that both the appellants and the respondent had pleaded ownership of the plot in dispute. The respondent failed to adduce any evidence to establish his ownership. Even the appellants, who claim to have received the suit plot through a written document from Smt.Krishni, have failed to establish this fact by way of any cogent evidence. No other document was produced to substantiate the plea of ownership by the appellants. In the absence of any concrete evidence, it cannot be said that the appellants or the respondent were the owner of the

suit plot. The findings of the learned lower Appellate Court on this issue are apparently erroneous as possession ipso facto is not a conclusive indication of the ownership of a property.

The next question that is to be determined is as to who is in possession of the suit plot. The lower Appellate Court recorded a finding that the respondent was in possession of the plot in dispute. The factum of possession is a finding of fact. Learned counsel for the appellants has not been able to show as to how this finding is perverse which can warrant interference in a Regular Second Appeal. The Hon'ble Supreme Court in Harjeet Singh and another Versus Amrik Singh and another, (2005) 12 S.C.C. 270, has held that the findings of fact unless shown to be perverse should not ordinarily be interfered with in Regular Second Appeal.

For the reasons mentioned above, there is no merit in the appeal and the same is dismissed. However, the issue of ownership would result in partial modification of the finding as determined by the learned lower Appellate Court.

December 15,2006 (Mahesh Grover)
"SCM" Judge